



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Confirmation No.: 3246

Jeroen WIGARD et al.

Art Unit: 2617

Application No.: 10/786,537

Examiner: Diego D. HERRERA

Filed: February 26, 2004

Attorney Dkt. No.: 059643.00365

For: METHOD AND CONTROLLER FOR CONTROLLING A CONNECTION

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

August 8, 2008

Sir:

The Office Action dated April 8, 2008 has been received and carefully noted. The following remarks are submitted as a full and complete response thereto. The Response had been duly extended from May 8, 2008, until August 8, 2008, by the attached Petition for Extension of Time.

The Office Action of April 8, 2008 presented a restriction requirement, requiring election between one of the following two inventions:

Invention I, recited in claims 1-18, 30, 31, and 34-39, drawn to first and second links capacity determining limiting capacity changing average power per bit; and

Invention II, recited in claims 19-29, 32, 33, 40, and 41, drawn to determining available sources for first and second links for a given bit rate.

Applicants respectfully elect to prosecute the subject matter of Invention I, recited in claims 1-18, 30, 31, and 34-39, drawn to first and second links capacity determining limiting capacity changing average power per bit. This elections is made WITH traverse. Applicants therefore respectfully request timely consideration on the merits.

Applicants submit that the restriction requirement is not timely and must be withdrawn. Referring to §811 of the MPEP, 37 CFR 1.142(a), second sentence, recites that

a restriction requirement "will normally be made before any action upon the merits; however, it may be made at any time before final action **." This means the examiner should make a proper requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops. Before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required.

As is clear from the prosecution history of the instant application, a Final Office Action was issued on November 11, 2006. The claims were substantively the same as they are today and there was no restriction requirement necessary in the previous rejections of claims 1-15 and 17-41. In the Final Office Action, the claims were examined and prior art was applied to reject claims 1-15 and 17-41 in light of Cheung and Harris. The Office Action clearly demonstrated that the examination process was handled without serious burden. Therefore, the implied belief that serious burden is now present in examining each of the pending claims is without merit. This restriction requirement is improper and must be withdrawn.

Applicants reserve the right to file a divisional application on the non-elected claims

at any point prior to the termination of the proceedings in the subject application.

In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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Enclosures: Petition for Extension of Time
Check no. 1938